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Attorneys for Plaintiff
GEN-PROBE INCORPORATED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE INCORPORATED,

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY,

Defendant.

Case No. 09-CV-2319 BEN (NLS)

**NOTICE OF MOTION AND MOTION TO
STRIKE DEFENDANT'S "UNCLEAN HANDS"
AFFIRMATIVE DEFENSE OR, IN THE
ALTERNATIVE, MOTION FOR PARTIAL
JUDGMENT ON THE PLEADINGS**

Date: May 10, 2010
Time: 10:30 a.m.
Ctrm: 3
Judge: Hon. Roger T. Benitez

AND RELATED COUNTERCLAIMS

1 PLEASE TAKE NOTICE that on May 10, 2010, at 10:30 a.m., or as soon thereafter as
 2 counsel may be heard, Plaintiff Gen-Probe Incorporated (“Gen-Probe”) will and hereby does
 3 move the Court for an order striking Defendant Becton, Dickinson and Company’s (“BD”)
 4 thirteenth affirmative defense of “unclean hands,” or in the alternative, issuing partial judgment
 5 on the pleadings thereon.

6 Gen-Probe brings this motion pursuant to Federal Rules of Civil Procedure 9(b), 12(f)
 7 and 12(c) on the grounds that BD’s “unclean hands” affirmative defense is facially and
 8 irreparably defective based on BD’s concession that it possesses no facts to allege in support of
 9 that defense.

10 Pursuant to Local Rule 7.1(d)(1), there will be no oral argument on this motion unless
 11 requested by the Court.

12 This motion is based on this Notice, the Memorandum of Points and Authorities in
 13 Support of this Motion, the Declaration of Alexander E. Long, pleadings and records on file in
 14 this case, and such arguments as may be presented to the Court, should the Court decide to hear
 15 argument on this matter.

16
 17 Dated: April 8, 2010

LATHAM & WATKINS LLP

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 19 By: s/ Alexander E. Long
 20 alex.long@lw.com

21 Attorneys for Plaintiff and Counterdefendant
 22 GEN-PROBE INCORPORATED
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12636 High Bluff Drive, Suite 400, San Diego, CA 92130.

On April 8, 2010, I served the following document described as:

1. **NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT'S "UNCLEAN HANDS" AFFIRMATIVE DEFENSE OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GEN-PROBE INCORPORATED'S MOTION TO STRIKE DEFENDANT'S "UNCLEAN HANDS" AFFIRMATIVE DEFENSE OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**
3. **DECLARATION OF ALEXANDER E. LONG IN SUPPORT OF GEN-PROBE INCORPORATED'S MOTION TO STRIKE DEFENDANT'S "UNCLEAN HANDS" AFFIRMATIVE DEFENSE OR, IN THE ALTERNATIVE, MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

by serving a true copy of the above-described document in the following manner:

BY ELECTRONIC FILING

I am familiar with the United States District Court, Southern District of California's practice for collecting and processing electronic filings. Under that practice, documents are electronically filed with the court. The court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document. Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities. Under said practice, the following CM/ECF users were served:

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1 I declare that I am employed in the office of a member of the Bar of, or permitted to
2 practice before, this Court at whose direction the service was made and declare under penalty of
3 perjury under the laws of the State of California that the foregoing is true and correct.

4 Executed on April 8, 2010, at San Diego, California.

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6 s/ Alexander E. Long
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